NO. 88-1105

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

STATE OF ALABAMA,

Petitioner

v.

RONALD WEEKS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

DON SIEGELMAN
ALABAMA ATTORNEY GENERAL

RIVARD DONALD MELSON
ASSISTANT ALABAMA ATTORNEY GENERAL

WILLIAM D. LITTLE
ASSISTANT ALABAMA ATTORNEY GENERAL

Counsel of Record

Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300

ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

I. Should this Court grant certiorari to resolve a split among the lower courts regarding the nature of an inducement sufficient to render a confession involuntary under the Fifth and Fourteenth Amendments?

II. Does the failure of the lower court to state any constitutional basis, federal or state, for its decision deprive this Court of jurisdiction over this issue?

PARTIES

The caption contains the names of all parties in the proceedings in the courts below.

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TABLE OF AUTHORITIES

OPINIONS BELOW

1. The opinion of the Supreme Court of Alabama reversing respondent's conviction is not yet reported, but is reproduced as Appendix A to this petition.[1]

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[1]The appendix to this petition is separately bound pursuant to Rule 21.1(k).

JURISDICTION

The judgment of the Supreme Court of Alabama which is sought to be reviewed was rendered on April 15, 1988. See Appendix A. On June 2, 1988, this Court granted petitioner's application for an extension of time to file this petition, extending said time to July 14, 1988. This Court has jurisdiction under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V (in pertinent part)

...; nor shall [any person] be compelled in any criminal case to be a witness against himself, ...

United States Constitution, Amendment XIV (in pertinent part)

...; nor shall any state deprive any person of life, liberty, or property, without due process of law; ...

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS

During the course of a conversation with respondent (defendant below) regarding respondent's possession of a pistol taken during a burglary, Sheriff's Investigator Lance Monley told respondent that he wanted respondent's cooperation in the burglary investigation and that if he confessed to his part in the crime, he, Monley, would make this known to the district attorney (T.R. 21-27; Appendix B, pp. 12-13). Respondent afterwards told Monley that he bought the pistol from a man named Wasp, and that he knew when he bought the gun that the serial number had been removed from it (T.R. 27-30; Appendix B, pp. 15-18).

B. PROCEEDINGS BELOW

Respondent was subsequently indicted by the Grand Jury of Baldwin County, Alabama, for receiving, retaining, or disposing of stolen property in the second degree in violation of Code of Alabama 1975, §13A-8-18 (T.R. 134). During the trial for the offense the incriminating statement to Monley was admitted into evidence over proper objection (T.R. 25-29; Appendix B, pp. 11-21). Respondent was convicted of this crime, and sentenced to five years imprisonment (T.R. 132, 140).

The conviction was appealed to the Court of Criminal Appeals of Alabama, which affirmed it without opinion. Ronald Weeks v. State, 1 Div. 211 (Ala.Cr.App. May 26, 1987). The

decision of the Court of Criminal Appeals was reversed by the Supreme Court of Alabama, which held that Monley's statement to respondent constituted an inducement which rendered the confession involuntary (Appendix A). The Supreme Court of Alabama did not state whether its finding of involuntariness was based on federal or state law (see Argument II below).

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A SPLIT AMONG THE LOWER COURTS REGARDING THE NATURE OF AN INDUCEMENT SUFFICIENT TO RENDER A CONFESSION INVOLUNTARY UNDER THE FIFTH AND FOURTH AMENDMENTS

In Bram v. United, 168 U.S. 532 (1897), this Court stated, regarding the Fifth Amendment, that

> ...a confession in order to be admissible must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence ..."

Id., at 542-543 (emphasis added). This general rule has been repeated by the Court in recent years. Hutto v. Ross, 429 U.S. 28, 30 (1976). The Court has often held, however, that the question of the voluntariness of any particular confession is to be determined from the totality of the circumstances. E.g., Miller v. Fenton, 474 U.S. 104, 117 (1985); Schneckcloth v. Bustamonte, 412 U.S. 218, 226-227 (1973); Boulden v. Holman, 394 U.S. 478 (1969); Haynes v. Washington, 373 U.S. 503, 513 (1963);

Culombe v. Connecticut, 367 U.S. 568, 601-602 (1961).[2]

In the case at bar the Supreme Court of Alabama held involuntary a confession made after respondent was told by a law enforcement officer that the officer wanted respondent's cooperation in the case and that if respondent confessed to his part in the crime the officer would make this known to the district attorney. (Appendix A). The Alabama court held that the "express promise" it found in the case engendered a hope of favor in the suspect's mind sufficient to induce his confession (Appendix A).

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[2]Even after the Fifth Amendment was held to be applicable to the States, the Court has continued to judge voluntariness under the due process clause of the Fourteenth Amendment. Miller v. Fenton, 474 U.S. 104, 110 (1985).

It is the rule in a large number of jurisdictions that the statement by an officer that cooperation by a suspect will be made known to the prosecutor or to the court does not alone render a confession involuntary. Williams v. Johnson, 845 F.2d 907 (11th Cir. 1988); United States v. Guarno, 819 F.2d 28 (2nd Cir. 1987); Miller v. Fenton, 796 F.2d 598 (3rd Cir. 1986), cert. denied, ____ U.S. _____, 107 S.Ct. 585 (1987); Barbara v. Young, 794 F.2d 1264 (7th Cir. 1986); Rachlin v. United States, 723 F.2d 1373 (8th Cir. 1983); United States v. Ballard, 586 F.2d 1060 (5th Cir. 1978); United States v. Curtis, 562 F.2d 1153 (9th Cir. 1977); Commonwealth v. Shine, 398 Mass. 641, 500 N.E.2d 1299 (1988); Hoey v. State, 311 Md. 473, 536 A.2d 622 (1988);

Commonwealth v. Clark, 516 Pa. 599, 533 A.2d 1376 (1987); People v. Martinez, 520 N.Y.S.2d 996 (A.D. 1987); State v. Cupit, 508 So.2d 996 (La. App. 1987); Free v. State, 293 Ark. 65, 732 S.W.2d 452 (1987); Baynard v. State, 518 A.2d 682 (Del. 1986); State v. Householder, 7 Conn. App. 1, 507 A.2d 1012 (1986); State v. Summers, 325 S.E.2d 419 (Ga. App. 1984); Bova v. State, 392 So.2d 950 (Fla. 1980); State v. Young, 33 N.C. App. 689, 236 S.E.2d 309 (1977).

The reasoning behind the numerous cases cited above is obvious. There was no promise of benefit offered, only a statement that a communication would be made, with no particular expectation of results. Moreover, any thinking criminal suspect is aware that the existence of an incriminating

statement will be communicated to the prosecuting attorney in any case; thus any "promise" is really a statement of what will occur regardless.

Moreover, it is clear from the facts of this case that Monley's statement did not induce the incriminating statement here. Monley told respondent that he wanted him to confess his part in a burglary. Respondent denied any involvement in a burglary, stating instead that he had bought the gun from a man named Wasp (T.R. 27-30; Appendix B, pp. 15-18). Respondent reemphasized that he had bought the gun even after stating that at the time he bought it the gun's serial number had been obscured (T.R. 27-30; Appendix B, pp. 15-18). It is clear that respondent thought he was making no incriminating statement at

all, but was only admitting an innocent act.

The holding in this case is contrary to that of the majority of courts which have considered the question of whether a statement similar to Investigator Monley's was sufficient in and of itself to render a confession involuntary. It is also inconsistent with the repeated principle of this Court that voluntariness depends on the totality of the circumstances, because the circumstances here indicate that respondent's inadvertently incriminating statement was not in fact induced by Monley's urging him to confess to the burglary.

Because of the split between the Alabama Supreme Court and the courts of numerous other jurisdictions, and because the Alabama Supreme Court has

ignored this Court's precedents regarding the totality-of-the-circumstances test, the Court should grant certiorari to decide whether, under the Fifth and Fourteenth Amendments, the statement made to respondent here regarding communication to the prosecutor of his cooperation rendered his confession involuntary and thus inadmissible.

II. THE FAILURE OF THE LOWER COURT TO MENTION THE FEDERAL CONSTITUTION AS THE BASIS FOR ITS DECISION DOES NOT DEFEAT THIS COURT'S JURISDICTION

Respondent might well point out that in its opinion the Supreme Court of Alabama did not mention any provision of the Federal Constitution as the basis for its decision, and might urge the Court to deny certiorari for this reason. A careful reading of the

opinion, however, reveals no particular constitutional or statutory ground, state or federal, for the holding regarding voluntariness.

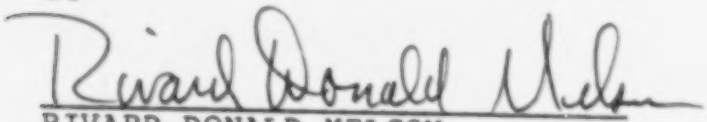
This Court has held recently that it will assume a constitutional basis for jurisdiction where the adequacy and independence of any possible state court ground is not clear from the face of the opinion. Michigan v. Long, 463 U.S. 1032, 1040-1041 (1983). Voluntariness of a confession is an issue under the Fifth and Fourteenth Amendments of the Federal Constitution. Miller v. Fenton, 474 U.S. 104, 116 (1985). Because the Supreme Court of Alabama did not indicate clearly that its test for voluntariness arose solely from state law, this Court should assume that the lower court's decision rested on federal law.

CONCLUSION

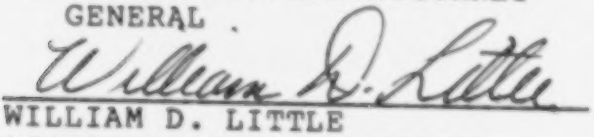
For the above reasons the Court should grant certiorari to decide the important federal question presented in this case.

Respectfully submitted,

DON SIEGELMAN
ALABAMA ATTORNEY GENERAL
BY-



RIVARD DONALD MELSON
ASSISTANT ALABAMA ATTORNEY GENERAL



WILLIAM D. LITTLE
ASSISTANT ALABAMA ATTORNEY GENERAL

Counsel of Record

ADDRESS OF COUNSEL:

Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300
0441t

CERTIFICATE OF SERVICE

I, Rivard Donald Melson, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this 14th day of July, 1988, I did serve three copies of this petition and the accompanying appendix on respondent, by placing said copies in the United States Postal Service, first-class postage prepaid, and properly addressed as follows:

Hon. Greg F. Jones
Wilkins, Bankester, & Biles, P.A.
P.O. Box 1140
Bay Minette, Alabama 36507

I further certify that I have served all parties required to be served.

Rivard Donald Melson
DONALD RIVARD MELSON

ATTORNEY FOR PETITIONER

NO. 88-105

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

STATE OF ALABAMA,

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APPENDIX TO

PETITION FOR WRIT OF CERTIORARI
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ASSISTANT ALABAMA ATTORNEY
GENERAL

Counsel of Record

Alabama State House
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(205) 261-7300

ATTORNEYS FOR PETITIONER

TABLE OF APPENDICES

APPENDIX A

APRIL 15, 1988

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1987-88

86-1307 Ex parte: Ronald Weeks

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

(In re: Ronald Weeks
v.
State of Alabama)

ALMON, JUSTICE.

Petitioner, Ronald Weeks, was convicted of receiving stolen property and was sentenced to five years in the penitentiary. The Court of Criminal Appeals affirmed this judgment, without opinion. Weeks filed a petition for certiorari, including a motion stating the facts pursuant to A.R.A.P., Rule 39(k).

On February 28, 1985, Investigator Lance Monley and Officer Jones of the Baldwin County Sheriff's Department, and Chief Joe Hall of the Daphne Police Department, went to Ronald Weeks's home to execute a search warrant. During the course of the search Monley uncovered a small amount of marijuana and a Smith & Wesson stainless steel .38 revolver. The serial number had been ground off the gun and Monley suspected that it had been stolen.

Monley accompanied Weeks to the front of Weeks's house trailer and read the Miranda rights warning to him while Officer Jones accompanied the children in Weeks's living room. Monley told Weeks that he was not under arrest but that he wanted to ask him some questions about the gun.

According to Monley's testimony, Weeks was willing to talk about how he acquired the gun and waived his right to remain silent and to have an attorney present during questioning. Monley told Weeks that "[He] wanted his cooperation in this matter" and that if he confessed to his part in the burglary "He [Monley] would make it known to the district attorney."

After Monley read the Miranda card and encouraged Weeks's cooperation, Weeks explained how he had acquired the gun. He told Monley that he had not stolen it but had purchased it from a friend. He said he knew when he bought the gun that the serial number had been ground off. After this discussion Monley encouraged Weeks to make a written statement regarding the alleged burglary in

which the gun was stolen, and again promised to contact the district attorney on his behalf if Weeks could provide such information. On cross-examination the defense attorney posed the following to Officer Monley: "So, you, in essence, said that you would go ahead and give something favorable to him if he would help you ..., did you not?" Monley responded, "Yes. I told him that I would speak to the district attorney."

The issue is whether this inducement negated the voluntariness of the inculpatory statement. As this Court said in Guenther v. State, 282 Ala. 620, 623, 213 So.2d 679, 681 (1968), cert. denied, 393 U.S. 1107 (1969):

> "The true test of voluntariness of extra-judicial

> confessions is whether, under all the surrounding circumstances, they have been induced by a threat or a promise, express or implied, operating to produce in the mind of the prisoner apprehension of harm or hope of favor; and if so, whether true or false, such confessions must be excluded from the consideration of the jury as having been procured by undue influence."

Citing Womack v. State, 281 Ala. 499, 205 So.2d 579 (1967).

Womack was a murder case in which the defendant was told it would "go lighter" on him if he talked. 281 Ala. at 506, 205 So.2d at 585. In reversing his conviction, this Court held that the sheriff's inducement gave the defendant a "real hope for lighter punishment" and therefore made his admission involuntary. See also,

Edwardson v. State, 255 Ala. 246, 51 So.2d 233 (1951); Kelly v. State, 72 Ala. 244 (1882); Redd v. State, 69 Ala. 255 (1881). As this Court said in Womack:

> "Any words spoken in the hearing of the prisoner which may, in their nature, generate such fear or hope render it not only proper but necessary that confessions made within a reasonable time afterwards shall be excluded, unless it is shown by clear and full proof that the confession was voluntarily made after all trace of hope or fear had been fully withdrawn or explained away and the mind of the prisoner made as free from bias and intimidation as if no attempt had ever been made to obtain such confessions."

Citing Owen v. State, 78 Ala. 425, 428 (1885). See also, Ex parte Callahan, 471 So.2d 463, 464 (Ala. 1985)

("Extrajudicial confessions are prima facie involuntary and inadmissible, and the burden is on the State to prove that the confession was made voluntarily"); Magwood v. State, 494 So.2d 124, 135 (Ala.Cr.App. 1985), aff'd 494 So.2d 154 (Ala.), cert. denied, ____ U.S. _____, 107 S.Ct. 599, 93 L.Ed 599 (1986) ("the State must show voluntariness and Miranda predicate in order to admit it"); Malone v. State, 452 So.2d 1386, 1389 (Ala.Cr.App. 1984); Cole v. State, 443 So.2d 1386 (Ala.Cr.App. 1983).

In the present case the arresting officer admitted that he offered to "give something favorable to him if he [Weeks] would help," just prior to eliciting the inculpatory statement. Where a suspect is subjected to custodial questioning regarding

alleged criminal activity, such an express promise would necessarily engender a hope of favor in the suspect's mind. Because the statement was not voluntarily given, it should have been excluded from the consideration of the jury.

It is also apparent from the record that the State did not sustain its burden of proof of voluntariness in regard to Officer Jones or Chief Hall. The burden is on the State to show proper predicates for the admission of an extrajudicial inculpatory statement, specifically, here, a lack of coercion or inducements. It is necessary for the State to show that neither Monley, Jones, nor Hall offered any inducement or coercion in soliciting the statement. Although Monley's

admission to offering an inducement for the statement is sufficient to exclude it, the fact that the State did not offer proof that neither Hall nor Jones offered any inducement or coercion is likewise grounds for excluding it for lack of voluntariness. Because all extrajudicial confessions are prima facie involuntary, the State has the burden of proving voluntariness. Ex parte Callahan, supra; Magwood v. State, supra. Unless the trial judge's conclusion that the inculpatory statement was voluntary and admissible is supported by evidence, it will not be upheld. Malone v. State, 452 So.2d 1386 (Ala.Cr.App. 1984).

Under the authorities cited above, this judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Torbert, C. J., and Maddox, Jones, Shores, Beatty, and Adams, JJ., concur.

APPENDIX B

(Pages Twenty-five through Thirty
of the Trial Transcript of
this Case)

...

I felt like he was involved in it.

Q: What did you ask him --

MR. JONES:

Wait a minute. Excuse me. At this point, Your Honor, I think he has indicated that some inducement was given. And I would object. I think maybe it should be taken up out of the hearing of the jury, you know, whether or not they were negated by him offering some inducement.

THE COURT:

All right. Take the jury out.

(Jury out.)

VOIR DIRE EXAMINATION

BY MR. JONES:

Q: Didn't you promise him that you would go light on him with some future crime if he gave you information; in other words, act as an informant? Didn't you promise him that?

A: I told him that if he would cooperate with his involvement in this thing -- in this burglary.

Q: What do you mean by cooperate?

A: Would confess his part in it so we could get it straight, you know, and that I would make it known to the District Attorney.

Q: You told him that?

A: Yes.

Q: So, you, in essence, said that you would go ahead and give something favorable to him if he would

help you. You made that promise, did you not?

A: Yes. I told him that I would speak to the District Attorney, yes, I did.

MR. JONES:

Your Honor, I think this is a violation of the Miranda rights, when the guy is in his home and under duress with his family and relatives being there, they are going to try to admit statements, and I don't think that should be admitted because he induced him.

But if he just blurted out the statement without being questioned, that's fine. But when he starts dealing on the spot like he did, I think clearly we should be able to keep out any statements made by the Defendant as being induced by him and the

promises which we haven't seen anything happen on.

BY MR. JONES:

Q: Was there any further effort to bring this deal to fruition? Did you contact him about doing this?

A: I asked him to contact me.

Q: But you never contacted him?

A: No. And he never contacted me.

MR JONES:

Okay. And I think it's inadmissible, clearly.

THE COURT:

Overrule the objection.

MR. JONES:

And we take exception.

THE COURT:

Bring the jury back in.

MR. JONES:

And we would like a continuing objection to any testimony at the scene by Mr. Weeks.

THE COURT:

All right.

(Jury in.)

CONTINUED DIRECT EXAMINATION

BY MS. MINIC:

Q: Now, after the Defendant indicated willingness to answer your questions and waived the presence of an attorney, what did you ask him, Officer Monley?

A: I asked him about the burglary that this gun was supposedly involved in. He said that he didn't take the gun; he just got the gun. And I asked him did he buy the gun, and he said, yes, he bought the gun.

Q: Okay.

A: I asked him how much he paid for the gun, and he said he didn't remember.

Q: Okay.

A: I asked him if the gun was the same as it was when he bought it, and he said, yes.

Q: Okay.

A: And I said, "Did you examine the gun when you bought it?" He said, yes, and I said, "Was it loaded?" And he said, "No, it was unloaded."

Q: Okay.

A: And then I said, "Did you notice that the serial numbers had been ground off of it?" And he said, yes.

Q: Okay.

A: And I said, "You knew it was stolen, didn't you?" And he said, "I didn't take the gun."

He kept saying, "I didn't take the gun. I didn't steal the gun."

Q: Okay.

A: And I said, "Do you know who did? You were involved, weren't you?" And he said, "No. I know where I got the gun."

And that's when he implicated this other party.

Q: Did he give you the name of another individual?

A: Yes, he did.

Q: What was the name?

A: Wasp, a subject from Fairhope.

Q: Did you ask him where this Wasp subject was?

A: Yes, I did.

Q: What did he say?

A: He said he thought he was in California at this point.

Q: After you had spoken to Mr. Weeks, did you ask for his cooperation or did you tell him that you would be willing to talk to him if he changed his mind in the future?

A: Well, I told Mr. Weeks that I would like to clear this burglary up, and I thought he was involved in the burglary itself, and that if he would like to get a statement or cooperate, that I would make his cooperation known to the District Attorney, because I felt like he was going to be charged with receiving and concealing as it stood, and possibly later with burglary.

MR. JONES:

And I object to the narrative. If counsel wants to ask a question --

THE COURT:

All right. If you keep quiet, I will sustain the objection.

BY MS. MINIC:

Q: Did you give him your telephone number to contact you?

A: Yes, I did.

Q: Did he ever contact you?

A: No, he didn't.

Q: What did you do with the weapons which you seized in this search?

A: I turned it over to Investigator Ernie Brown, who took it to the State Lab of Forensic Science for analysis.

Q: And were those guns ever returned to you?

A: Yes, they were.

Q: And did you pick them up at the lab?

A: No, I did not. I received them from Investigator Ernie Brown.

Q: What did you do with them after that?

A: I took them and locked them up in my office locker.

Q: Have they been in your care, custody, and control since that time?

A: Yes.

Q: Do they appear to be in the same condition as when you found them at the Weeks' residence?

A: Yes, they do.

Q: Did this all happen here in Baldwin County?

A: Yes, it did.